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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:

LIN 07 179 51062

Office: NEBRASKA SERVICE CENTER

Date FEB 23 2010

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO), dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a legal expert. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States. In a decision that considered the letters submitted at length, the AAO concurred.

On motion, the petitioner submits a statement asserting that the director and the AAO failed to consider the evidence in the aggregate and two letters of support authored in 2008.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides, in pertinent part:

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

If the U.S. Citizenship and Immigration Services (USCIS) decision was mailed as it was in this case, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The regulation at 8 C.F.R. § 103.2(a)(7) provides that the date of filing is the date of receipt by USCIS. The regulation at 8 C.F.R. § 1.1(h) provides:

The term “day” when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

The AAO’s decision is dated May 4, 2009. The 33<sup>rd</sup> day fell on Saturday, June 6, 2009. As such, the motion was due Monday, June 8, 2009. 8 C.F.R. § 1.1(h). While the petitioner signed the Form I-290B Notice of Appeal or Motion June 1, 2009, the date of shipping on the Federal Express receipt is June 7, 2009, 34 days after the AAO’s decision. The motion was received Tuesday, June 9, 2009, 37 days after the AAO’s decision. The record reveals that the AAO’s notice was mailed to the petitioner

at his address of record. As such, the petitioner has not demonstrated that his failure to file a timely motion was due to USCIS error. Moreover, the new evidence provided is dated in 2008 and, thus, was available to submit with a timely motion. While the motion would have been timely on Monday, June 8, 2009 pursuant to 8 C.F.R. § 1.1(h), quoted above, in considering whether the late filing was reasonable and beyond the petitioner's control, we cannot ignore that the petitioner did not mail his motion until the 34<sup>th</sup> day. Even if the motion was delayed by the overnight delivery service, the error would not warrant special consideration of the motion. *See Matter of Liadov*, 23 I&N Dec. 990 (BIA 2006). Thus, we are not persuaded that the late filing was reasonable and beyond the petitioner's control.

**ORDER:** The motion is dismissed.